

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

Date: 06/01/2007

Time: 10:00:00 AM

Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager

Clerk: Kathleen Sandoval

Bailiff/Court Attendant:

ERM:

Reporter:

Case Init. Date: 06/19/1998

**Case No: JCCP4041**

Case Title: JCCP4041 COORDINATION PROCEEDING TOBACCO  
LITIGATION

Case Category: Civil - Unlimited

Case Type: Misc Complaints - Other

Event Type: Motion Hearing (Civil)

Moving Party: PEOPLE OF THE STATE OF CALIFORNIA EX REL, BILL LOCKYER

Causal Document & Date Filed: Motion for Judgment on the Pleadings, 04/04/2007

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**Appearances:**

Michelle Hickerson for People of the State

Shari Posner for People of the State

Edna Walz for People of the State

Jose Allen for U.S. Smokeless Tobacco

Douglas Flemming, 111 for U.S. Smokeless Tobacco

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The Court, having taken the above-entitled matter under submission on 05/29/2007 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

**RULING AFTER ORAL ARGUMENT:** The Court rules on plaintiff/cross-defendant People of the State of California's ("People") motion for judgment on the pleadings on the Second Amended Cross-Complaint ("SACC") as follows:

Based upon the arguments of the parties presented at the hearing, the Court affirms its tentative ruling. The motion is denied for the reasons stated below.

The claim requirements do not apply where, as here, the People contracted them away. (Gov. Code §930(a).) If this is done, the claim provision in the written agreement "exclusively governs the claims to which it relates." (Gov. Code §930.4.) Here, the People and U.S. Smokeless Tobacco Co. ("USSTC") signed the Smokeless Tobacco Master Settlement Agreement ("STMSA") on November 23, 1998. Section VII subd. (c)(2) provides that "a party shall provide 30 days' written notice to the Attorney General of each Settling State...of its intent to initiate proceedings" before initiating any proceedings to enforce the terms of the agreement. The SACC alleged that USSTC abided by the STMSA's 30-day notice provision by serving its 30-day notice on the Attorney General. (SACC, ¶¶110-111.) The People argue that they did not contract away the claim requirements since STMSA did not include an explicit waiver by the People of its right to notice of a claim for money damages under section 905. However, one could also argue that if the People wanted to ensure that the claim requirements weren't contracted away, it would have included a provision in the agreement explicitly stating that the notice requirements set forth in Section VII subd. (c)(2) would be in addition to the claim requirement set forth in the Government Code section 900 et seq.

Even assuming the People had not contracted away the claim requirements, USSTC's notice was a claim as presented. "A 'claim as presented' is a claim that is defective in that it fails to comply substantially with Government Code sections 910 and 910.2, but nonetheless puts the public entity on notice that the claimant is attempting to file a valid claim and that litigation will result if it is not paid or otherwise resolved." (Alliance Fin. v. City & County of San Francisco (1998) 64 Cal.App.4th 635, 643 (hereafter "Alliance").) The Court notes that the court in Alliance found the notice sent to an agency different from the one specified can nevertheless constitute a claim as presented. (Id. at p. 650.) Here, USSTC's 30-day notice put the People on notice that USSTC was asserting a claim against it that if not resolved would result in litigation. Therefore, the People had an obligation to inform USSTC of its view that a 30-day notice did not comply with the CTCA. (SACC, ¶110.) The People did not do so. (Id. at ¶111.)

As to the other arguments proffered by USSTC, the Court has concluded that they do not support USSTC's position given the facts as

presented.

The minutes are the order of the Court. No formal order is required.